

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1259

AN ACT to amend the Indiana Code concerning family law and juvenile law.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 22-12-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 5. (a) "Class 2 structure" means any part of the following:

(1) A building or structure that is intended to contain or contains only one (1) dwelling unit or two (2) dwelling units unless any part of the building or structure is regularly used as a Class 1 structure.

(2) An outbuilding for a structure described in subdivision (1), such as a garage, barn, or family swimming pool, **including an above ground swimming pool**, unless any part of the outbuilding is regularly used as a Class 1 structure.

(b) Subsection (a) does not include a vehicular bridge.

SECTION 2. IC 22-12-10 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

**Chapter 10. Above Ground Swimming Pools at Class 2 Structures**

**Sec. 1. This chapter applies only to an above ground swimming pool that is sold:**

**(1) for installation on property that:**

**(A) contains a Class 2 structure; and**

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- (B) does not contain a Class 1 structure; and  
 (2) in Indiana after December 31, 2008.

**Sec. 2.** As used in this chapter, "above ground swimming pool" means any swimming pool whose sides rest fully above the surrounding earth.

**Sec. 3.** As used in this chapter, "pool retailer" means a person who sells an above ground swimming pool for installation on property that:

- (1) contains a Class 2 structure; and  
 (2) does not contain a Class 1 structure.

**Sec. 4.** As used in this chapter, "swimming pool" has the meaning set forth in 675 IAC 20-1.1-18.

**Sec. 5.** A pool retailer who sells an above ground swimming pool that has walls that are at least forty-eight (48) inches high shall ensure that the above ground swimming pool is sold with an access ladder or steps that may be:

- (1) removed; or  
 (2) secured and locked;

**when the above ground swimming pool is not in use.**

SECTION 3. IC 31-34-21-4, AS AMENDED BY P.L.145-2006, SECTION 316, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Except as provided in subsection (f), at least ~~ten (10)~~ **seven (7)** days before the periodic case review, including a case review that is a permanency hearing under section 7 of this chapter, the department shall ~~send~~ **provide** notice of the review to each of the following:

- (1) The child's parent, guardian, or custodian.  
 (2) An attorney who has entered an appearance on behalf of the child's parent, guardian, or custodian.  
 (3) A prospective adoptive parent named in a petition for adoption of the child filed under IC 31-19-2 if:

(A) each consent to adoption of the child that is required under IC 31-19-9-1 has been executed in the form and manner required by IC 31-19-9 and filed with the county office;

(B) the court having jurisdiction in the adoption case has determined under any applicable provision of IC 31-19-9 that consent to adoption is not required from a parent, guardian, or custodian; or

(C) a petition to terminate the parent-child relationship between the child and any parent who has not executed a written consent to adoption under IC 31-19-9-2 has been filed under IC 31-35 and is pending.

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**(4) The child's foster parent or long term foster parent.**

~~(4)~~ **(5)** Any other person who:

(A) the department has knowledge is currently providing care for the child; and

(B) is not required to be licensed under IC 12-17.2 or IC 31-27 to provide care for the child.

~~(5)~~ **(6)** Any other suitable relative or person whom the department knows has had a significant or caretaking relationship to the child.

~~(b)~~ **(b)** At least ten ~~(10)~~ days before the periodic case review, including a case review that is a permanency hearing under section 7 of this chapter, the department shall provide notice of the review to the child's foster parent or long term foster parent by the same process prescribed under Indiana Trial Rule 4.1. The department shall present proof of service of the notice at the case review.

**(b) The department shall present proof of service of the notice required by subsection (a) at the periodic case review.**

**(c) The department shall provide notices under this section as provided in IC 31-32-1-4.**

~~(c)~~ **(d)** The court shall provide to a person described in subsection (a) ~~or (b)~~ an opportunity to be heard and to make any recommendations to the court in a periodic case review, including a permanency hearing under section 7 of this chapter. The right to be heard and to make recommendations under this subsection includes:

(1) the right of a person described in subsection (a) ~~or (b)~~ to submit a written statement to the court that, if served upon all parties to the child in need of services proceeding and the persons described in subsection (a), ~~or (b)~~, may be made a part of the court record; and

(2) the right to present oral testimony to the court and cross examine any of the witnesses at the hearing.

~~(d)~~ **(e)** Except as provided in subsection (f), this section does not exempt the department from sending a notice of the review to each party to the child in need of services proceeding.

~~(e)~~ **(f)** The court shall continue the review if, at the time of the review, the department has not provided the court with signed verification from the child's foster parent or long term foster parent, as obtained through subsection (b); that the foster parent or long term foster parent, has been notified of the review at least five ~~(5)~~ business days before the review. However, the court is not required to continue the review if the child's foster parent or long term foster parent appears for the review.

**(f)** If the parent of an abandoned child does not disclose the parent's name as allowed by IC 31-34-2.5-1(c), the parent is not required to be

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notified of a proceeding described in subsection (a).

SECTION 4. IC 31-34-21-7, AS AMENDED BY P.L.138-2007, SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) The court shall hold a permanency hearing:

- (1) not more than thirty (30) days after a court finds that reasonable efforts to reunify or preserve a child's family are not required as described in section 5.6 of this chapter;
- (2) every twelve (12) months after:
  - (A) the date of the original dispositional decree; or
  - (B) a child in need of services was removed from the child's parent, guardian, or custodian;
 whichever comes first; or
- (3) more often if ordered by the juvenile court.

(b) The court shall:

- (1) make the determination and findings required by section 5 of this chapter;
- (2) consider the question of continued jurisdiction and whether the dispositional decree should be modified;
- (3) consider recommendations of persons listed under section 4 of this chapter, before approving a permanency plan under subdivision (5);
- (4) consult with the child in person, or through an interview with or written statement or report submitted by:
  - (A) a guardian ad litem or court appointed special advocate for the child;
  - (B) a case manager; or
  - (C) the person with whom the child is living and who has primary responsibility for the care and supervision of the child;

in an age appropriate manner as determined by the court, regarding the proposed permanency plan;

- (5) consider and approve a permanency plan for the child that complies with the requirements set forth in section 7.5 of this chapter;
- (6) determine whether an existing permanency plan must be modified; and
- (7) examine procedural safeguards used by the department to protect parental rights.

(c) If the child is at least sixteen (16) years of age and the proposed permanency plan provides for the transition of the child from foster care to independent living, the court shall:

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- (1) require the department to ~~send~~ **provide** notice of the permanency hearing to the child, in accordance with section 4(a) of this chapter; and
- (2) provide to the child an opportunity to be heard and to make recommendations to the court, in accordance with section ~~4(c)~~ **4(d)** of this chapter.

(d) There is a rebuttable presumption that jurisdiction over the child in a child in need of services proceeding continues for not longer than twelve (12) months after the date of the original dispositional decree or twelve (12) months after the child in need of services was removed from the child's parent, guardian, or custodian, whichever occurs first. The state may rebut the presumption and show that jurisdiction should continue by proving that the objectives of the dispositional decree have not been accomplished, that a continuation of the decree with or without any modifications is necessary, and that it is in the child's best interests for the court to maintain its jurisdiction over the child. If the department does not sustain its burden for continued jurisdiction, the court shall:

- (1) direct the department to establish a permanency plan within thirty (30) days; or
- (2) discharge the child and the child's parent, guardian, or custodian.

The court may retain jurisdiction to the extent necessary to carry out any orders under subdivision (1).

**SECTION 5. An emergency is declared for this act.**

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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